

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY V. STAGG,
RICHARD L. SHEEMAN, JR., and DEAN A. MINER

Appeal 2006-1760
Application 09/728,697
Technology Center 1700

Decided: January 18, 2007

Before EDWARD C. KIMLIN, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.
KIMLIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of May 31, 2006, wherein we affirmed the Examiner's rejections of all the appealed claims, including the rejections of independent claims 1, 17, and 18 over Riddell in view of Osborn, and over Underwood in view of Osborn and Leseman.

Appellants point to an argument in the Reply Brief that "plainly distinguishes the 'opening means 5 of Riddell' from 'the 'tearable tape strip'

limitations of claims 1, 17, and 38” (Appellants’ Request 2, first paragraph). However, although the tearable tape strip of Riddell comprises features that are not recited in the appealed claims, the tape strip of Riddell does meet the claimed requirements for

the tearable tape strip being defined by opposing, longitudinal edges and a central section, the central section being tearable relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable, and wherein the tearable tape strip comprises one of reinforced strapping tape and filament reinforced tape.

(Appealed claim 1). Appellants’ Request fails to point out how the tape strip of Riddell does not meet the claim requirements.

Appellants also maintain that “[t]he Board improperly relied on the results reported in Appellants’ specification as the sole support for its conclusion that films characterized by a puncture-propagation tear resistance of at least 20 N/ply are ‘low tear strength’ films as described by Riddell. (See the Decision, page 6.)” (Request 2, second paragraph). Our Decision, however, does not rely on any reports found in Appellant’s Specification. Rather, we explain at page 6 of the Decision that “appellants seem to overlook that Riddell actually teaches that the tear strength of the polyethylene films is only sufficiently low to permit opening of the package which, manifestly, is a property shared by appellants’ ‘tear-resistant film.’” Our following statement that a “tear-resistant film within the scope of the appealed claims must also have a sufficiently low tear strength to permit opening of the package” does not refer to any specification results, but only

Appeal 2006-1760
Application 09/728,697

states the obvious, namely, that the packaging material of Appellants, like that of Riddell, has a sufficiently low tear strength to permit opening of the package.

Regarding Appellants' query concerning whether it is our position that it would have been obvious to replace the tape of Underwood with the tape of Leseman, or modify the tape of Underwood with the ribs of Leseman, it is our position that it would have been obvious for one of ordinary skill in the art to select, as alternatives, either the highly uniaxially oriented film of Underwood, or the reinforced tear strips of Leseman, along with their corresponding advantages and disadvantages.

In conclusion, based on the foregoing, Appellants' request is granted to the extent we have reconsidered our decision, but is denied with respect to making any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2004).

DENIED

clj

3M Innovative Properties Co.
P.O. Box 33427
St. Paul, MN 55133-3427